
IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT. 2

CHARLES H. MOYER, as Trustee for the
Western Federation of Miners, a Volun-
tary Unincorporated Association of Per-
sons with its Headquarters in the City and
County of Denver, State of Colorado,
CHARLES H. MOYER, C. E. MA-
HONEY, and ERNEST MILLS as mem-
bers of the Western Federation of Miners,
a Voluntary Unincorporated Association of
Persons with its Headquarters in the City
and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corpor-
ation,

Appellee.

BRIEF OF APPELLANTS.

CANNING & GEAGAN,
O. N. HILTON,
E. P. KELLY,

FEB 5 - 1917

F. D. Monckton,
Clerk.

Solicitors and of Counsel for Appellant.

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No.
2875

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STATEMENT OF THE CASE.

This action was instituted by the complainants,
CHARLES H. MOYER, as Trustee for the Western
Federation of Miners, a Voluntary Unincorporated
Association of Persons with its headquarters in the
City and County of Denver, State of Colorado,

CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons with its Headquarters in the City and County of Denver, Colorado, and others, whose names were subsequently stricken from the Bill of Complaint before trial, against The Butte Miners' Union, a corporation, in the United States District Court, District of Montana.

In their bill of complaint, the complainants pray for a decree of the Court decreeing that the defendant has no estate or interest whatsoever in or to the lands and property described in the complaint and that the complainants be decreed to be the owners of, and entitled to the possession of the property described in the complaint, and that the defendant be ordered by the decree to perform all of the terms of the charter from the Western Federation of Miners, to the Butte Miners' Union, and turn over, transfer to, and convey to, the Western Federation of Miners, all of the property described in the complaint. And further praying that the defendant and its agents, servants, and employes and officers, be enjoined and restrained from asserting any claim whatsoever in and to the lands and property described in the complaint, adverse to the complainants. All of which property the complainants claim to be the owners of on account of the contract between the Western Federation of Miners, a voluntary unincorporated association of persons, with its

headquarters in the city and county of Denver, state of Colorado, and the defendant The Butte Miners' Union. In their bill of complaint the complainants allege their character as members of the Western Federation of Miners, a voluntary unincorporated association of persons, engaged in the work of mining, milling, smelting and reduction of ores and minerals, and in and about mines, mills, and smelters in the United States of America, the Dominion of Canada, and British Columbia; and allege that the Western Federation of Miners is divided into local unions in the different states of the United States of America, and the Dominion of Canada, and British Columbia; and that it is composed of several thousand persons engaged in working in the occupations above mentioned. And further allege, that the complainants named bring the suit as members of the Western Federation of Miners, for the benefit of all the members of the Western Federation of Miners, for the reason that it is impracticable to bring all of the members of the Western Federation of Miners before the Court as plaintiffs. They allege the corporate existence of the defendant. They then allege the application of the defendant by and through its officers, to the Western Federation of Miners on the 22nd day of September, 1914, for a charter, a copy of which application is set forth in the bill of complaint. (Tr. pp. 6 and 7.) They then allege that in accordance with the application of the defendant, the Western Federation of Miners issued a charter to the complainants, a copy of which charter is set forth in

the bill of complaint. (Tr. pp. 8 and 9.) And allege that the defendants accepted the said charter and worked under it until the 15th day of June, 1915. And that on the 15th day of June, 1915, the defendant passed a resolution withdrawing from the Western Federation of Miners, and refusing to longer affiliate with it. They then allege a demand upon the defendant, The Butte Miners' Union, for all of the property owned by it at the time of the passage of its resolution of June 15, 1915, and further allege the performance by the Western Federation of Miners of its part and portion of its contractual obligations and describe the property sought to be recovered by the complainants.

To this bill of complaint the defendant filed its answer, admitting the corporate existence of the defendant; denying the existence of the Western Federation of Miners at the time of the making of the bill of complaint, and at the time of the filing of the answer, alleged by way of explanation, that at one time the Western Federation of Miners did exist, but had ceased to exist prior to the time of making the bill of complaint. The defendant then denies that the members of the Western Federation of Miners are very numerous and that it is impracticable to bring them before the Court as plaintiffs. Denies that the plaintiffs bring the suit for the benefit of the members of the Western Federation of Miners; denies that the complainants named in the bill of complaint were at the date of the bringing of the action members of any local

of the Western Federation of Miners; and deny that they have any right or claim to the property described in the bill of complaint. The defendant then denies that it has any knowledge or information sufficient to form a belief as to the place of residence of the complainants named in the bill of complaint. The defendant then admits the application of September 22, 1914, as set forth in the bill of complaint of plaintiffs, and admits that the Western Federation of Miners did send a charter as set forth in the bill of complaint, but denies that the said charter is a re-issuance of the charter lost or destroyed which was dated May 15, 1893, and denies that the defendant accepted in any manner or at all the said charter or that it worked under the same, until June, 1915, or at all. And alleges that the defendants rejected the charter upon its arrival for the reason that it was not a re-issuance or a duplicate of the former charter. That is, the charter referred to as being dated May 15, 1893. The defendant then admits that on the 15th day of June, 1915, it passed a resolution withdrawing from the Western Federation of Miners and refusing to longer affiliate with the Western Federation of Miners. And also alleges that since the receipt of the charter set forth in plaintiffs' bill of complaint, the defendant has refused to longer affiliate with the Western Federation of Miners or to pay monthly dues thereto. The defendant then admits the demand upon it by the Western Federation of Miners for the property owned by it at the time of the passage of the resolution of June 15, 1915. The de-

defendant then denies that the Western Federation of Miners has kept and performed its obligations to be by it kept and performed as alleged in the bill of complaint, and then makes a further allegation by way of denial, that the terms of the charter were never agreed upon and denies that the Western Federation of Miners have performed any of the conditions of the original charter bearing date May 15, 1893. They admit the allegations of the bill of complaint as to the ownership of the property described in the bill of complaint as belonging to the Butte Miners' Union at the time of the passage of its resolution of June 15, 1915. Defendant then denies the existence of any contract between the complainants and the defendant, and denies that because of the existence of any such alleged contract, that all or any of the property of the defendant corporation became on the 15th day of June, 1915, or at any other date or at all, the property of the plaintiffs. And further allege that the defendant corporation was at that time and for many years passed before that time, unable by virtue of the laws of the state of Montana, to make or enter into any such contract or to bind itself, its property, or the property of its members, in any such manner or at all, or to dispose of the said property or its control in any manner or at all other than as provided by the laws of the state of Montana, or to subject itself or its members or its corporate property to the jurisdiction of an authority existing outside of, or beyond the control of the laws of the state of Montana, the state under which the de-

fendant corporation was created. The defendant then admits its refusal to turn over the property upon demand of the complainants. The defendant then sets up nine affirmative defenses in its answer. The first of which alleges that the plaintiffs and neither of them are entitled to the relief prayed for or for any relief. The second of which alleges that the defendant is not answerable to the plaintiff or any of them, and that if it is answerable to any one at all it is to the Western Federation of Miners. The third of which affirmative defenses alleges that the Butte Miners' Union is a corporation, and that it has been since the 13th day of June, 1878, a bona fide voluntary labor organization, composed of men engaged in mining, milling, smelting, and reduction of ores and minerals in and about mines, mills and smelters in the county of Silver Bow, state of Montana; and that it has during all of that time exercised jurisdiction over that class of labor in the county of Silver Bow, state of Montana, and that its corporate existence dates from the 4th day of May, 1881; and that its principal place of business is in the city of Butte, county of Silver Bow, state of Montana; and that it has complied with the law relative to becoming and perpetuating itself as a corporation; and further alleges that it has never asked to wind up its affairs and that its affairs have never been wound up, and that the corporation has never been dissolved according to the laws of the state of Montana or in any other manner; and further alleges in its affirmative defense that in compliance with its constitution and by-

laws since its organization as a voluntary association of miners and working men, it has collected monthly dues from each of its members for the purpose of transacting its business, establishing a library, caring for its sick, and burying its dead; and alleges that the plaintiffs had nothing to do with the organization of the defendant, either as an association or as a corporation; and alleges that the relations existing between the defendant and its members were voluntary. And it then further alleges in this defense, that about the latter part of the month of April, or the early part of the month of May, 1893, the defendant in conjunction with other miners' unions, located in the states of Montana, Idaho and South Dakota, called a convention composed of delegates elected by the miners' unions, to meet in the city of Butte for the purpose of creating a better understanding, and the harmonious interchange of working cards between themselves, and to create a central body composed of delegates elected from each local in attendance thereat, in proportion to the number of its members, through which communications could be received and sent, and which could arbitrate possible differences that might arise between locals composing it, or between employers and its locals; that at this convention the Western Federation of Miners was created; that the membership of the different locals of the Western Federation of Miners was and is solely voluntary; and that the federation depended for its existence upon voluntary revenue derived as per capita tax from the different locals, it having no other

income, and that on the contrary, the locals comprising the Federation can exist independent of the Western Federation of Miners, and sets forth the adoption by the Western Federation of Miners of a constitution and by-laws, a portion of which governed the conditions under which new locals could be admitted to membership, and a provision providing for the method of raising revenues. (Tr. pp. 36-37.) And then alleges in this affirmative defense, that on the 15th day of May, 1893, the defendant accepted a charter from the Western Federation of Miners, but alleges that said charter contained no clause or provision relating to the forfeiture of property or property rights, and further alleges that the defendant was without authority or power under the laws of the state of Montana to make or enter into any such contract; that there was nothing of value passed from the Western Federation of Miners to the defendant for and on account of the acceptance by the defendant of the charter from the Western Federation of Miners, to repay the defendant for the per capita tax called for under the said charter, to be paid by the defendant. It then alleges a continuance of the defendant to pay per capita tax to the Federation under its first charter from the 15th day of May, 1893, to the first day of December, 1914, along with many other allegations of the payment of different sums of money to the Western Federation of Miners.

In its fourth affirmative defense the defendant alleges the institution of suits in the month of December,

1914, against the defendant by Charles H. Moyer, one of the complainants, and other persons to obtain control of the property and affairs of the Western Federation of Miners. (Tr. pp. 46 to 50.)

Then for its fifth affirmative defense the defendant pleads that it received no consideration whatever from the Western Federation of Miners or any person for the original charter, or the pretended re-issuance of said charter, or any part of either, and there is no consideration and there was no consideration for any part of either. (Tr. p. 50.)

And in its sixth affirmative defense, it further pleads want of consideration for the following clause, to-wit: "It is agreed that should the aforesaid Union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books, and papers shall become the property of the Western Federation of Miners," contained in the re-issuance of the charter as the same is plead in the bill of complaint. And further pleads that there was no such clause or any part thereof, either in words or in substance in the original charter; and that the original charter was lost and destroyed and cannot be plead in the answer.

And for its seventh affirmative defense, pleads, that there is no provision in the constitution or by-laws of the Western Federation of Miners which is set up as "Exhibit D" in the answer of the defendant, authorizing or empowering the issuance of any charter containing the clause "It is agreed that should the aforesaid

union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," and that that clause was inserted in the pretended re-issuance of the original charter without authority.

And for its ninth affirmative defense, it pleads that that portion of the charter, to-wit: the clause, "It is agreed that should the aforesaid union withdraw or be dissolved, suspended, or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," is illegal and against public policy, and that every portion thereof contravenes the express provisions of Section 4226 of the Revised Codes of Montana of 1907, as amended by Chapter 101 of the Session Laws of 1909, of the Eleventh Legislative Assembly of the state of Montana.

And for its ninth affirmative defense, it pleads that the same clause is illegal and against public policy and that every portion thereof contravenes the express provisions of Sections 3889 and 3890 of the Revised Codes of the state of Montana of 1907. And then prays in its answer that the complainants take nothing in the action. That the defendant be decreed the sole owner of the property described in the plaintiffs' bill of complaint, and that it be further decreed that the plaintiffs and each and all of them, their agents, servants, employees, officers and all persons acting by their

direction and under their control be permanently and forever enjoined and restrained from asserting any claim in or to the lands and property of the defendant corporation, and for its costs.

The trial of the cause was had on these pleadings and upon the assumption^d by both parties that the question as to whether or not the original charter by the Western Federation of Miners of date May 15, 1893, contained the following clause, to-wit: "It is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books and papers shall become the property of the Western Federation of Miners," was in issue. The complainants taking the position that the charter of 1893 contained this clause, and that the charter issued in October, 1914, a copy of which is set forth in the bill of complaint, was a re-issuance of the charter of 1893, in compliance with the request of the defendant; and that this charter contract was a binding contract as between the parties, and that the defendant by its resolution and action of June 15, 1915, had placed itself in a position by which, under its contract it should convey to the complainants all property owned by it on the 15th day of June, 1915. The defendant taking the position that the above mentioned clause relating to forfeiture of property did not exist in the original charter of May, 1893, and the further position that if it did exist, it was illegal and void as being against public policy and contrary to the express

provisions of the statutes and laws of the state of Montana, the state in which the defendant was incorporated and had its place of business, and therefore not-enforcible.

THE PRINCIPAL QUESTIONS ARISING IN THE CASE ARE AS FOLLOWS:

1. Is a contract in writing such as that set forth in the bill of complaint as the charter from the Western Federation of Miners to the Butte Miners' Union, an enforceable contract as between a corporation on the one hand, and a voluntary association on the other?

2. Is such a contract void as against public policy?

3. Is such a contract void and unenforceable for the reason that one of the parties to it, that is, the defendant, The Butte Miners' Union, is a Montana corporation, limited in its scope of action and business by the following provisions of the laws of the State of Montana, to-wit: Chapter 101 of the Session Laws of 1909 of the Legislative Assembly of the state of Montana, which is as follows:

"A bill for an act to amend Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of 1907, relating to Religious, Social and Benevolent Corporations, and providing that two or more Religious, Social or Benevolent Corporations may incorporate conjointly.

"Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of Montana, 1907, respectively, be amended so as to read as follows:

“Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

“Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to-wit: (A., B., C., D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under

the provisions of this chapter, and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.

“Section 4226. The trustees or directors, of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions, may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state if such associations be a state, representative, supervisory, governing or ~~grant~~ organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907, certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Sections 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909."

And Sections 3889 and 3890 of the Revised Codes of the State of Montana, which read as follows, to-wit:

"3889. (§520.) Powers of corporations.—

Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.
2. To sue and be sued, in any court.
3. To make and use a common seal, and alter the same at pleasure.
4. To purchase, hold, and convey such real and personal estate as the purpose of the corporation may require.
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions as qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Act approved March 7, 1905, §3.)

(9th Sess. Chap. 102.)

“3890. (§521.) Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers except such as are necessary to the exercise of the powers so enumerated and given.”

4. Is not the contract expressed by the charter such a contract as is made and entered into for the purpose of carrying out the aims, and business of the defendant as a corporation as shown by its articles of incorporation?

5. In as much as the complainants have entered into a contract the terms of which are expressed by the charter plead in the bill of complaint and have acted in accordance therewith, and have assumed liabilities and obligations thereunder, such as the matter of defense of suits brought against the other party to the contract, to-wit: The Butte Miners' Union, a corporation, and have allowed the members of the defendant, to transfer from it to other local unions of the Federation, and have expended money on behalf of the defendants, are they to be placed in such a position that the defendant can have received these benefits, then sever its connection with the complainants, and take with it all of its property, notwithstanding the terms of the contract upon which the complainants

rested and relied in their actions and relations with the defendant?

6. Is not the defendant in such a position that after the lapse of more than twenty (20) years of action as a member of the Western Federation of Miners under the charter contract, ~~in such a position that~~ it cannot claim that it was without power to enter into such a contract and to be bound by the same?

7. Is not the existence of the clause, "It is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books, and papers shall become the property of the Western Federation of Miners," in the charter of May 1893 established?

IRRELEVANT ALLEGATIONS AND CONTENTIONS.

We have presented above a brief statement of the case.

In addition to the matters properly in issue, the defendants have plead many irrelevant matters that have no bearing upon the issues of the suit, and have attempted to introduce, and have introduced some evidence relative to these matters.

We do not discuss these matters in the brief of the argument appearing hereafter, except only insofar as they relate to the specifications of error, and refer to them here only sufficiently to explain their irrelevancy to show that the defendant in this regard has been

inspired by a desire to divert attention ^{from} for the real issues of the suit, and to create a prejudice against the complainants.

The irrelevant subjects referred to, are defendants allegations as to the plaintiff amending its constitution in order to enable the Western Federation of Miners to take control of the property of The Butte Miners' Union, a corporation, and the bringing of suit by the President of the Western Federation of Miners, Charles H. Moyer, and others, against the Butte Miners' Union, in the District Court of the Second Judicial District of the State of Montana, under this amendment to the constitution, and the fact that upon a petition for a writ of Supervisory control in the Supreme Court of the State of Montana made by The Butte Miners' Union and the persons who were named defendant in the suit in the District Court, a Writ of Supervisory Control was granted by the Supreme Court of the State of Montana, ordering the District Court to set aside and annul the Writ of Injunction that it issued on the cause in that Court; and the further allegations as to the amounts contributed by The Butte Miners' Union to the Western Federation of Miners before the withdrawal of The Butte Union, and the plea of misconduct on the part of certain officials of the Western Federation of Miners toward the Western Federation of Miners.

The Amendment to the Constitution.

In 1914, the complainant, Western Federation of

Miners, amended its constitution by a referendum vote of the different locals composing the Western Federation of Miners, so as to give the President of the Western Federation of Miners power to take over the management and control of a local union of the Federation whenever it would appear upon a written petition of ten per cent. of the members of the local union in good standing, that the officers of the local union were not conducting the affairs thereof properly and were violating the provisions of the Constitution and By-Laws of the Western Federation of Miners. Under this provision of the constitution in December, 1914, upon a petition being received in writing from ten per cent. of the members in good standing of the Butte Miners' Union, the President of the Western Federation of Miners, Charles H. Moyer, attempted to take control of the affairs of the Butte Miners' Union, but was not allowed to do so by the then officers of The Butte Miners' Union, who were charged with misconduct in the written petition. That thereupon, Charles H. Moyer, and others, members of the Western Federation of Miners, and members of The Butte Miners' Union, the appellee here, brought suit against the then officers of The Butte Miners' Union, Martin Scahill, Patrick Lee, Patrick O'Neill, Mike A. Sullivan, James Ryan, James Walsh, and Patrick Quigley, to secure an injunction against them, from interfering with the President of the Western Federation of Miners in taking control of the affairs of The Butte Miners' Union, until such time as

an election of officers could be held, and its affairs placed on a business basis. An injunction was granted in the District Court in this case in favor of the complainants for the relief sought.

The Case in the Supreme Court of Montana.

After this injunction was granted in the District Court of Montana, the defendants in that suit along with The Butte Miners' Union, a corporation, which was not a defendant in the suit in the District Court, applied to the Supreme Court of the State of Montana for a writ of Supervisory Control directed to the District Court of the Second Judicial District of the State of Montana, and the Honorable John B. McClernan, Judge thereof, and upon the hearing upon this petition the Supreme Court of Montana granted the Writ of Supervisory Control and never wrote nor delivered any opinion thereon from that day to this. The date of the granting of this Writ being July, 1915. In that suit the question of ownership of the property involved in the suit now before this Court was not brought in question.

Payments Made by the Defendant to the Western Federation of Miners.

The defendants in their answer allege many thousands of dollars as having been paid out by the defendant to the Western Federation of Miners in donations, assessments, and per capita tax from 1893 to 1914. But, even if such payments were made, they were made under its contractual relations, and for the benefit of

all of the members of the Western Federation of Miners, of which organization all of the members of The Butte Miners' Union, the defendant, were members; and for the purpose of protecting the rights of the members of the Western Federation of Miners, as they themselves saw their rights as existing. So, if there was any wrongful handling of these funds it would be a matter of internal policy and a matter of accounting of the officers of the Federation to the Federation, and not a matter that would affect the relative position of the parties to this suit.

ASSESSMENT OF ERRORS.

Now come the complainants by their solicitors and say:

That in the Decree heretofore entered in this cause on the 15th day of May, 1916, the Court erred in the following particulars:

1. The Court erred in ordering that the complainants take nothing by this action.
2. The Court erred in ordering that the complainants and each of them and their servants, agents, representatives, attorneys and employes and all persons acting for them or either of them or by their authority or by the authority of either of them, or in their behalf, or in the behalf of either of them, or under their control, or under the control of either of them, be enjoined and permanently restrained and enjoined from in any manner interfering with or asserting any claim to, or

claiming any of the property, real, personal or mixed, of the defendant.

3. That the Court erred in enjoining and restraining the complainants from in any manner interfering with or asserting any claim to, or claiming any of the property, real, personal, or mixed, of the defendant, and particularly the property described in the complaint and decree herein.

4. That the Court erred in adjudging and decreeing the defendant to be the sole owner of and entitled to the possession of the property described in the Bill of Complaint, and described in the decree herein as follows:

“The south fifty (50) feet of lot numbered One (1) and the south fifty (50) feet of lot numbered Two (2) and the south fifty (50) feet of the east twenty-one (21) feet of lot numbered three (3), all in block numbered eleven (11) of the Butte Townsite, according to the official plat and survey thereof of record in the office of the county clerk and recorder of Silver Bow County, Montana.

A note and mortgage to secure the said note for the sum of twenty-five thousand (\$25,000.00) dollars, given by the Lead City Miners' Union, a corporation of the State of South Dakota, to The Butte Miners' Union, the defendant herein. The mortgage securing said note having been heretofore foreclosed and the property of the

Lead City Miners' Union in Lead, South Dakota, having been sold at Sheriff's sale under said foreclosure and having been bought in for and in behalf of the said The Butte Miners' Union, the defendant herein.

All the money and certificates of deposit in the Daly Bank and Trust Company, of Butte, Montana;

Any and all books, papers, seals and other property."

5. That the Court erred in not finding that the defendant has no estate or interest whatsoever in and to the lands and property described in the complaint herein, and in the decree herein.

6. That the Court erred in not finding and ordering that the complainants were the owners of and entitled to the possession of the property described in the Bill of Complaint and in the decree herein.

7. That the Court erred in not finding and ordering and decreeing that the defendant turn over to, transfer to, and convey to, the Western Federation of Miners, all of the property described in the complaint herein, and in the decree herein.

8. That the Court erred in not enjoining and restraining the defendant and its agents, servants, employes and officers from asserting any claim whatsoever in and to the lands, and property described in the Bill of Complaint herein, and in the decree herein, adverse to the complainants herein.

9. The Court erred in admitting the following testimony of the witness, Charles Baxter:

Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date, I believe of Denver, dated October 3d, was that charter ever accepted by The Butte Miners' Union, a corporation, the defendant here?

MR. GEAGAN: We object to that as calling for a conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. "Never, to my knowledge."

Q. Who presented exhibit "F" to you?

MR. GEAGAN: To which we object as incompetent, irrelevant and immaterial.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Guy Miller, the personal representative of C. H. Moyer.

THE WITNESS: Guy Miller is one of the members of the Executive Board. I cannot state who prepared this, and do not know of my own knowledge whether Guy Miller prepared it or not. I was in my own home when this was presented to me, and my home is on South Colorado street, number 2530.

I was in Department Two of the District Court of the Second Judicial District of the State of Montana, in and for the County of Silver Bow, when Guy Miller was on the stand and being interrogated in regard to this.

Q. Did you hear him testify at that time that he had, or admit that he had, gone to every individual whose name appears here, to solicit their signature to this?

MR. HILTON: I submit that would be wholly incompetent.

Which objection was by the Court sustained, to which ruling the defendant then and there duly asked for and was allowed an exception.

Q. After this there was a suit brought by Mr. Miller and others in the District Court in regard to what it set forth here, was there not?

MR. GEAGAN: We object to that as calling for a conclusion of the witness, the best evidence being the record itself.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Yes, sir.

Q. During all of the times and since the matter was decided by the Supreme Court on the 3d day of July, last, you have been a member of the Butte Min-

ers' Union, a corporation, defendant here, have you not?

MR. GEAGAN: To which we object, if your Honor please, as incompetent, irrelevant and immaterial; and on the further ground and for the further reason that there is incorporated in the question a statement which calls for a conclusion of the witness as to what was stated by the Supreme Court of the State of Montana; on the ground and for the reason that the Supreme Court of the State of Montana has never handed down any opinion or rendered an opinion as to what position they took, save and except to grant a supervisory control for the setting aside of a certain restraining order issued out of the District Court.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. I have been continuously a member in good standing since May, 1898, the last time.

Q. Mr. Baxter, yesterday your attention was called to your signature appearing on an article herein, Plaintiffs' Exhibit "F," and you were asked if you signed that article, or that document. Now why did you sign it?

MR. GEAGAN: We object to that, if your Honor please, as irrelevant and immaterial, and not proper examination as to the instrument. The instrument itself shows the reasons why it was signed, and those

reasons it appears to appear to state upon its face.

THE COURT: What are you offering it for?

MR. BREEN: I am offering it to show that upon an investigation by this witness after his signature being on there, that he found that the facts were not as represented in that document, and represented to him by Mr. Miller.

THE COURT: Well, I doubt if it is material, but if that is the purpose he may answer. The objection is overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. Mr. Miller came to me and explained the clause in the constitution of the Western Federation of Miners, which had been adopted showing where the officials of the Federation had power to take charge of the affairs of the union under certain conditions, which were that there should be charges preferred and proven against the officers, and that they should be disposed from office and a new election called and he went on talking that way, and so I signed the thought of the way the office was being conducted, and he went on talking that way, and so I signed the petition, and he said then, after I signed it—

MR. GEAGAN: We object to what was said after signing it.

Which objection was by the Court sustained, to which ruling the defendant then and there asked for

and was allowed an exception.

A. I have not explained why I signed it yet.

Q. Was there any other reason given by Mr. Miller than the one you have stated?

A. Yes. That we should have a fair election and elect a new set of officers afterwards, but before such an action could take place the regular election came on and there was a new set of officers elected, and then the Federation still brought suit to forfeit all the property so that I didn't think then that he was sincere in his petition.

X. The Court erred in admitting in evidence the following testimony of the witness Jacob Oliver:

Q. Mr. Oliver, prior to The Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

MR. GEAGAN: To which we object as incompetent, irrelevant and immaterial, and not within the issues of the case at bar, and that whatever discussions there were, if there were such discussions, were merged in the contract as evidenced by the charter of the Western Federation of Miners to The Butte Miners' Union, a corporation, and that the same could not be contradicted by evidence relating to any discussion prior to entering into the contract, or upon any evidence not

evidenced by any record, and if not shown that there was any discussion taken by the organization as a corporation.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

Q. Will you state what was done and what examination and investigation or understanding was had before The Butte Miners' Union voted to become a member of the Federation?

MR. HILTON: We object to that, unless the question goes farther and shows between who that understanding was had.

THE COURT: Any understanding; if there was any discussion let him state the substance of it with reference to what would be the effect of joining the Federation.

MR. BREEN: That is what I am aiming at.

THE COURT: Let him state that. You understand, he is asking you if anything of the sort took place in the Union.

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings pro and con, as to the result of The Butte Union joining the Federation. In fact, I was one of the fellows

who were opposed to the organization of the Western Federation and I know—

MR. GEAGAN: I move that that statement of the witness be stricken out.

THE COURT: Denied.

A. (Continuing)—and I know one of the points that was asked of the fellows, you might say the opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well, we were unanimous, finally in joining the Federation.

Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally at the time you referred to?

MR. GEAGAN: We object to that as leading and suggestive and improper redirect examination.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked and were allowed an exception.

A. Well, it seemed to be the general understanding there.

11. The Court erred in admitting in evidence the following testimony of the witness, William E. Deeney:

Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

MR. GEAGAN: We object to that, if your Honor please, as incompetent, for the reason that the constitution itself is the best evidence of whether it contains such a clause or not.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. No, there was no clause of the kind to my knowledge in the constitution, that is the first constitution..

12. The Court erred in admitting in evidence the following testimony of the witness Frank O'Connor:

Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of The Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

MR. GEAGAN: To which we object, if your Honor please, that the best evidence, it appearing that the witness now on the stand likely has one of the constitutions in his possession at his home, and that

being the fact the instrument would be the best evidence itself.

THE COURT: He may answer now, and produce it this afternoon, if he has one, and introduce it in evidence. Overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in the potter's grave.

THE WITNESS: There was a provision in the constitution providing for a certain amount each week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners, after 1893, up to the 13th of June, and later there have been funeral benefits paid.

13. The court erred in admitting in evidence the following testimony of the witness Pat Leahy:

Q. Well, did you, or did the Butte Miners' Union, a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

MR. GEAGAN: We object to that as incompetent, irrelevant and immaterial, and calling for a con-

clusion of the witness as to the quarterly report. And its reception or non-reception, would be immaterial to the issues in this case.

THE COURT: Overruled.

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by law suits since the date of that letter?

A. No, sir.

MR. GEAGAN: We object to that as irrelevant and immaterial, and calling for the conclusion of the witness.

Which objection was by the Court overruled, to which ruling the plaintiffs then and there duly asked for and were allowed an exception.

14. The court erred in admitting in evidence the following testimony of the witness, James J. Maher:

Q. At that time the Granite Mountain Miners' Union owned a large hall and considerable property, did it not?

A. Yes, sir.

MR. GEAGAN: We object to that as irrelevant and immaterial.

THE COURT: It might be a circumstance in actions of this character whether or not a forfeiture clause was in the original charter of the defendant. The objection is overruled.

To which ruling the plaintiffs then and there duly asked for and were allowed an exception.

15. The Court erred in admitting in evidence the following testimony of the witness Pat Lee:

MR. BREEN: We now offer the document known as Defendant's 4 for identification, and one identified by Mr. Lee, the witness on the stand, as a circular letter from Mr. Moyer.

MR. GEAGAN: To which we object on the ground and for the reason that the same is incompetent, irrelevant and immaterial to the issues involved at bar, the document affirmatively appearing on its face to relate to a public communication in the papers and press; that it does not relate to any action or communication which was placed in the hands of the Western Federation of Miners, and that the same is not relevant or material or competent to bind the parties to this action in relation to the contract now before the Court for interpretation upon the evidence.

THE COURT: If the document is entitled to no weight the Court will give it none. Overruled.

To which ruling of the Court the plaintiffs then and there duly asked for and were allowed an exception.

Which said document is as follows:

Independence, Education, Organization. Western Federation of Miners. Officers: Chas. H. Moyer, president, 503 Denham Building, Denver, Colorado;

C. E. Mahoney, Vice-President, 503 Denham Building, Denver, Colo.; Ernest Mills, Secy-Treas., 503 Denham Building, Denver, Colo.; John M. O'Neill, Editor, 503 Denham Building, Denver, Colo. Executive Board: J. C. Lowney, 450 N. Idaho St., Butte, Montana; Yanco Terzich, Angeles Camp, California; Wm. Davidson, New Denver, British Columbia; Guy E. Miller, P. O. box 300, Joplin, Missouri. Western Federation of Miners, Organized May 15, 1893. Affiliated with A. F. of L., 503-11 Denham Building, Denver, Colo. SBT. & OAU \$14,491.

December 15, 1914.

To the Officers and Members of Local Unions, Western Federation of Miners.

Dear Sirs and Brothers:—Having noticed in the daily press of Butte City a long and vicious article which purports to be a petition sent from Butte Union No. 1 to other locals of our Federation, this is to officially notify all locals of the Western Federation of Miners that said petition, or whatever it may be called, is not an official act of the Butte Miners' Union No. 1, of the Western Federation of Miners, but emanates from a few men who, after having agreed with me in the month of June that it would be for the best interest of No. 1 that they should tender their resignations as officers elect of the local and having done so in writing, yet in forty-eight hours after I left Butte repudiated said resignations and were installed in office, and, as good and sufficient proof will be furnished, have since

that time absolutely refused to co-operate with the representative of your Federation or to comply with its laws, but have in fact labored apparently with all their might to complete the job undertaken by the mobs of June 13th and 23rd, which was to absolutely destroy every vestige of unionism in Butte City, the only difference in the methods being that they have followed the program of looting the treasury while the other applied direct action and sabotage. When stopped by the constitutional amendment to our law which was taken advantage of by many more than the ten per cent. of the membership required petitioning the President of your organization to take charge of the affairs of the local, they absolutely refused to conform to the constitution and have taken this step seeking to divert attention from their infamy by charging Federation officials with attempting to disrupt No. One. This action was taken after your Executive Board Member Guy E. Miller, acting for the Federation in my behalf, had read the petition and notified the union that under the Federation law its affairs were under the control of the Western Federation, they therefore, being without authority to act officially for the local.

This will be sufficient guide for our local unions until the next issue of the Miners' Magazine, when every detail of the situation will be placed before the membership by Board Member Miller, who is on the ground, as well as Vice-President Mahoney and Board Member Lowney. I shall, also, for the benefit of the

membership and the public fully review the Butte situation in the issue of our official organ.

Fraternally yours,

(Seal).

CHARLES H. MOYER,

Western Federation of Miners.

President.

BRIEF OF ARGUMENT.

We will attempt to dispose of the matters in controversy here in the order in which the Court below seems to have considered and disposed of them according to its opinion. (Tr. p. 296.)

There can be no question as to the right of the complainants to maintain this action on behalf of themselves and the other members of the Western Federation of Miners, for when the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the Court, one or more may sue or defend for the whole. Part of the above language is the exact language of Rule 38 of the Equity Rules for the Courts of Equity in the United States, which became effective on the first day of February, 1913, and the same question has been passed upon in *Smith vs. Swarmstedt*, 18 Howard 228; *Bacon vs. Robertson*, 18 Howard, 480.

The allegations of the Bill of Complaint show that the complainant Western Federation of Miners, is a voluntary organization or association of persons, and

that they are very numerous, being several thousand in number, scattered through different parts of the United States, the Dominion of Canada, and British Columbia, and that it is impracticable to bring them before the Court as plaintiffs. (Tr. pp. 4 and 5). And the testimony in the case, which is uncontradicted, shows in one place that the membership was approximately Eleven Thousand. This according to the testimony of the Witness Charles E. Mahoney. (Tr. p. 307). Then again according to the testimony of the witness, Ernest Mills: The membership consists of several thousand. (Tr. p. 309). So, that all of the facts necessary to bring the case within the Rules of Equity of the United States Courts, and the law as laid down by the Supreme Court of the United States in the above cited cases, has been complied with.

The first question that presents itself to us in the matter of discussing this case here as in the Court below, after the question of jurisdiction is the question as to whether or not a contract in writing such as the one which is plead in complainants' Bill of Complaint as the application for a charter (Tr. pp. 6 and 7) and the charter issued by the complainants upon the receipt of this application (Tr. pp. 8 and 9) is one that can be enforced according to its terms upon the happening of the event of the withdrawal of the applicant, the one to whom the charter was granted.

The application for the charter is made by the corporation by and through its officers acting, as the

application shows on its face, by authority of a resolution directing and instructing its President, Secretary and Board of Directors or Trustees to apply for a re-issuance of a charter.

In this portion of the brief we are discussing the question in the light that it is assumed that there is no controversy as to the charter being a re-issuance of the charter formerly in possession of the applicant. And further assuming that there is no particular or specific provision of the Laws of the State of Montana, preventing this particular corporation defendant from contracting as other corporations.

The Western Federation of Miners is, of course, a voluntary unincorporated association of persons and is therefore a different individuality, if an individuality it can be called before the law, than is the artificial creature, the corporation.

The persons who are members of the corporation are engaged in the same general line of business and occupation as are the members as a whole, of the voluntary association, of which the corporation was one of the units, or locals. There is no denial of this fact, either in the pleading or the evidence. And the pleading affirmatively shows that they were both engaged in the same line of business. Consequently their interest must be and should be identical as affecting the membership in their chosen calling or profession.

A somewhat similar situation to the one presented

in this portion of the argument arose in the State of New York, and finally got into the Courts of New York, and is reported in the New York Reports under the title, *McCord vs. Thompson-Starrett Co., et al.*, in 112 N. Y. Supplement at page 902, and in 113 N. Y. Supplement at page 385. Upon the hearing of this case in the Appellate Court of New York, that Court speaking of the power of contract in that particular case stated as follows: "The plea that it was beyond the corporate powers of the Thompson-Starrett Co., to vest in an outside body the right to bind it by the regulations adopted by the Board of Governors, merits scant recognition. The agreement with the plaintiff association had reference to the business which by its charter the defendant was authorized to conduct. It was designed to facilitate it in its business operations, and to prevent a repetition of the ruinous and hazardous situations with which it has been confronted, just prior to the time that it became a member of the association. The act of becoming a member, being in itself a lawful one and directly related to its corporate powers. It seems clear that it did not transcend its powers when it subscribed to the constitution of the association." (112 N. Y. Supplement 902). This cause was afterward on appeal to the Supreme Court, appellate division, reversed, but not upon the proposition above quoted. For the Supreme Court in its opinion in the case, said through Justice Scott, "We find no difficulty in affirming this judgment, if the building trades and employers association had gone

no farther than to order a general lock-out of the members of the Brotherhood of Carpenters." But they held in this appeal that the order made by the building trades and employers association was void and could not be enforced against a member for the reason that it went beyond the powers of the association and the agreement of the members of the association.

In the case at bar, there is no claim that the association went beyond its powers as an association in its demand for performance of duties by the defendant prior to its withdrawal. The corporation, defendant, agreed to accept and be governed by the constitution, by-laws and regulations of the association, Western Federation of Miners. And further agreed that in the event that it should withdraw from the Western Federation of Miners, or be dissolved, suspended or forfeit the charter, then all property, monies, books, and papers, should become the property of the Western Federation of Miners. This portion relating to the property agreement, is undoubtedly as much an inducement for entering into the contract as the agreement to be bound by the by-laws and constitution of the association. And in this connection it is well to remember that neither the corporation nor the association are business enterprises, as the term business enterprise is commonly known and understood. That is, they are not enterprises instituted and maintained for the purpose of profit upon capital invested. They both having in view the protection of the rights

of their members as laborers in certain occupations in the selling of their labor and the maintaining of fit and proper conditions surrounding the execution of their labor, such as wages, hours of employment and sanitary and social conditions.

There is nothing in the contract that is in itself illegal or that involves moral turpitude. Consequently it is such a contract as may be brought into a Court of Law or Equity to be enforced, upon the failure of one of the parties to comply with its terms when the event entitling the other party to performance has transpired.

Where a contract is not in itself beyond the powers of a corporation it is presumed that the corporation has power to make the contract.

Choctaw, etc. R. R. vs. Bond, 160 Fed., 403.

Cooke on Corporations, Vol. 3, Sec. 681, p. 2230.

A contract of a corporation is binding if it is not expressly prohibited and if it has, "a natural and reasonable tendency to aid in the accomplishment of the objects for which the corporation was created."

Colorado etc. Co. vs. American etc. Co., 97 Fed., 483.

Is Such a Contract Void and Against Public Policy?

In this connection we are discussing such a contract as the one expressed by the application of the

corporation for the re-issuance of a charter and the charter issued in response thereto. There is nothing expressed in the contract that in any way tends to injure the rights of the public in general as apart from the corporation and association. It is not such a contract as tends to foster any imposition upon the public, nor tends to prevent the conducting of the proper functions of public officers in the protection of the life, property, peace, quiet, and health, of the community or of the nation; nor is there anything apparent in the contract that contravenes any established law or policy of the state that incorporated the corporation, the state in which the contract is to be performed, for the laws of that state, which is the State of Montana, relating to corporations such as the defendant here, provide in Sec. 4226 of the Revised Codes of Montana, as amended by Chap. 101 of the Session Laws of 1909 of the Legislative Assembly of the State of Montana, among other things, that such corporations organized in pursuance to that provision: "May have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law, and enforce the same by proper penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise, or bequest, personal or real estate, and may use and dispose thereof only for the purposes for which the corporation is organized."

And one of the purposes, and in fact the principal

purpose for which this corporation defendant was organized, is expressed in its articles of incorporation as follows:

To protect the interests of the membership of said association and to enable it to hold such property as may be necessary for the promotion of its good and the advancement of the interests of the same.” (Trans. p. 450).

And since these same articles of incorporation state that Miners’ Union—the original incorporation—was composed of Miners and others (Trans. p. 450) and the association with which it contracted was likewise composed of miners and other persons engaged in the same general line of employment and was organized for the purpose as stated in the preamble of its constitution as adopted at its organization—

“Since there is scarcely any fact better known than that civilization has for centuries progressed in proportion to the production and utilization of the metals, precious and base, and most of the comforts enjoyed by the great majority of mankind are due to this progress, the men engaged in the hazardous and unhealthy occupation of mining should receive a fair compensation for their labor, and such protection from the law as will remove needless risk to life and health; we therefore deem it necessary to organize the Western Federation of Miners of America for the pur-

pose of securing by education and organization a wise legislation and just compensation for our labor and the right to use our earnings free from dictation by any persons whatsoever. We therefore declare our objects to be:

“First. To secure an earning fully compatible with the dangers of our employment.

“Second. To establish as speedily as possible and forever our right to receive pay for labor performed in lawful money, and to rid ourselves of the iniquitous system of spending our earnings where and how our employers or their officers may designate.

“Third. To procure the introduction and use of any and all suitable, efficient appliances for the preservation of life, health and limbs of all employes, and thereby preserve to society the lives of large numbers of wealth producers annually.

“Fourth. To labor for the enactment of suitable mining laws, with a sufficient number of inspectors, who shall be practically miners, for the proper enforcement of such laws.

“Fifth. To provide for the education of our children by lawfully prohibiting their employment until they shall have obtained a satisfactory education, and in every case until they shall have reached sixteen years of age.

“Sixth. To prevent by law any mine owner or mining company from employing any Pinkerton detective or other armed forces from taking possession of any mine, except the lawfully elected and appointed officers of the state, who shall be *bona fide* citizens of the county and state.

“Seventh. To use all honorable means to maintain friendly relations between ourselves and our employers, and endeavor by arbitration or conciliation to settle such differences as may arise between us, and thus make strikes unnecessary.

“Eighth. To use all lawful and honorable means to abolish the system of contract convict labor in states where it now exists and to (446) demand the enforcement of the foreign contract labor law and protection of our American miners and mechanics against imported pauper labor.

“Ninth. To demand the repeal of all conspiracy laws that in any way abridge the rights of labor organizations.

“Tenth. To procure employment for our members in preference to non-union men.”

(Trans. pp. 485-486-487). —

^{there} There was no departure from the objects of the corporation which in themselves were and are lawful. And in this connection and relating to this portion of the argument it is well to remember that the defendant corporation through, first, by its invitation to other

unions and second, by its participation in the general convention by and through its delegates, assisted in bringing about the organization of this very federation of which it became a part; and that two of its own members were members of the committee of five that were appointed to draft a charter and ritual for the use of the Western Federation of Miners, these two members being Bart Maloy and Wm. Cunningham (Trans. p. 496); So, that we can see nothing against public policy in the contract.

Is Such a Contract Unenforceable for the Reason That One of the Parties to It Is a Montana Corporation Limited in Its Scope of Action in Business ~~for~~ the Laws of the State of Montana?

The limitations placed upon this corporation defendant, the appellee here, by the laws of the State of Montana, the State of its incorporation, are such as re-imposed by Sections 4225 and 4226 of the Revised Codes of Montana as amended by Chap. 101 of the Session Laws of 1909 of the Legislative Assembly of the State of Montana, which sections, as amended, read as follows:

“Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

‘Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to-wit: (A., B., C., D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for the purpose to file with the proper officer articles of incorporation as required by law.” The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under the provisions of this chapter and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.”

“Section 4226. The trustees or directors of

whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state if such associations be a state, representative supervisory, governing or grand organization or body, articles of incorporation, and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907, certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Section 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate

penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909.

And Sections 3889 and 3890 of the Revised Codes of the State of Montana are read as follows:

“3889. (§520) Powers of Corporations. Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.

2. To sue and be sued, in any court.

3. To make and use a common seal, and alter the same at pleasure.

4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.

5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.

6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.

7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.

8. To create two or more kinds of stock of such classes, with such designation, preferences and voting powers, or restrictions as qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price to be expressed in the stock certificate thereof; and the holders thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate, not exceeding eight per centum, payable quarterly, semi-annually or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulative. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Act approved

March 7, 1905, 3) (9th Sess., Chap. 102).

“3890. (§521) Limitation of powers. In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.”

Such corporations as The Butte Miners' Union have great powers as to how they may take property both real and personal, and the only limitation placed upon them is that they use and dispose of that property only for the purposes for which the corporation is organized. This limitation is placed by Section 4226, *supra*, as amended, and by sub-section 7 of Sec. 3889 of the Revised Codes of Montana, as the same is set forth, *supra*, which enables it to enter into any obligations or contracts essential to the transaction of its ordinary affairs or for the purposes of the corporation; and according to the powers given to all corporations under the Laws of the State of Montana and expressed by Section 3890, *supra*, it has power to do all acts necessary to carry into effect the powers given to corporations under the laws of the State of Montana.

Taking into consideration again the purposes for which this defendant corporation was incorporated, as expressed in its Articles of Incorporation (Trans. p. 450) and the class of persons of whom the member-

ship of this corporation was and is composed, can it be said that its becoming a member of the Western Federation of Miners and contracting with it and accepting a charter from it was not an act done to protect the interests of the membership of the corporation and for the advancement and promotion of the good of the membership since the association of which it became a part was one whose objects and aims were the mental, physical and social betterment of the class of persons constituting the membership of the defendant corporation, which was the same as the membership of the general organization? These purposes and aims are referred to and set forth in the last subdivision of this argument above. This same corporation defendant took particular pains in the eighth section of its Articles of Incorporation, to provide for changes which read as follows:

“Said corporation shall be subject to such rules and regulations as it may now have for its government or may hereafter enact provided they are not contrary to these Articles of Incorporation (Trans. p. 452).”

And they did afterward, through becoming a member of the Western Federation of Miners, adopt new rules and regulations for the conduct of the affairs of the corporation when they became a portion of the Western Federation of Miners (Trans. pp. 487 to 496).

There is no expressed provision in these laws

prohibiting this corporation defendant from making such a contract as that evidenced by the application and charter so long as the contract is made with one or with many whose interests are the same as that of the corporation and who would have, under the contract, a tendency to aid in the accomplishment of the objects for which the corporation was created.

Choctaw etc. R. R. v. Bond, Supra.

Colorado etc. Co. v. American Co., Supra.

Cook on Corporations, Vol. 3, Sec. 681, p. 2230.

So that we can find no limitations, either express or implied, placed upon the defendant corporation which prevent it from entering into such a contract, as the one in controversy here, in the Laws of the State of Montana, the state in which it was incorporated and in which the contract was entered into.

The proposition covered by the fourth question in the case has been practically covered in the discussion of the three preceding questions, and we believe is thereby shown to exist as contended for by these appellants.

The Purpose of the Corporation.

The defendant corporation, as is shown by the evidence and pleadings in this case, was a corporation at the time of the organization of the Western Federation of Miners. The Western Federation of Miners was organized in the Miners' Union Hall in Butte,

Montana, and the call for the convention at which this Federation was organized was made by The Butte Miners' Union, the appellee herein. (Trans. p. 332). The corporation defendant was one of the movers, in fact, the prime movant in bringing about the organization of the Western Federation of Miners, and became the first local of the Western Federation of Miners, and was designated as No. 1 of the Western Federation of Miners (Trans. p. 515), and two of its own members were members of the committee that drafted the form of charter and the ritual for the society (Trans. p. 496). It caused others to enter into contracts of like nature with the Federation by which it could benefit through their failure to perform in accordance with the provisions of their charters, and received all the benefit of this. The members of the corporation were at that time very capable of judging of what the purpose and objects of the corporation were. Is such a corporation to be allowed to enter into relations of a contractual nature with others and continue to receive the benefits of these relations for more than twenty years and then, without so much as offering to even partially perform its contract, to take with it all which it has agreed to deliver to the other parties upon the happening of a certain event when that event has transpired? In this respect it has been said that a society which has received the benefit of a contract may be estopped to raise the offense of ultra vires.

Wood v. Supreme Rule Etc., 212 Ill., 522.

Con v. Heilman, 241 Penn. p. 374.

Cooke on Corporations, 7th Ed. Vol. 3, Sec. 681, p. 2239.

And in connection with ultra vires acts of corporations upon which the defendant corporation in this suit seems to want to rest, it has been well stated, we take it, by that learned author, Wm. W. Cooke, in his work on corporations, 7th Ed., Vol. 3, p. 2239, after reviewing a great number of cases on ultra vires contentions by an organized corporation, as follows:

“Out of the various cases set forth in this chapter a few general rules may be drawn and stated.

“First, there is no clearly defined principle of laws that determines whether a particular act is ultra vires or intra vires. The courts are becoming more liberal and many acts which fifty years ago would have been held to be ultra vires would be held to be intra vires. The courts have greatly enlarged the implied powers of ordinary corporations until now such corporations may do almost anything that an individual may do, provided the state and the stockholders and creditors do not object. In the case of railroads the courts are more strict. The public are interested in the acts and operations of railroads. Hence, ordinarily, the courts will not sustain the acts of railroads in selling, leasing, or mortgaging their

property or engaging in any outside business unless the public assent through the legislature, but as to the ordinary private corporations the rules of *ultra vires* have been greatly relaxed.

“Second, the decision in any particular case turns largely on the question of who is the complainant; against whom the complaint is made; and what relief is sought. The stockholder’s action is looked upon most favorably if he is not guilty of delay. But an action by the state to enjoin the act or to forfeit franchises is an unusual, extraordinary and somewhat harsh remedy, and is not favored by the courts. So, also, in an action by the corporation itself or by the party contracted with to repudiate an *ultra vires* act is not favored by the courts. Such an action is an attempt by a party to evade its contracts by means of the principles of law which both parties have violated or waived the benefit of. The court is not swift to grant the relief in such cases.

“Third, if a contract or act is *ultra vires*, and has not yet been performed, either the corporation or the party contracted with may refuse to complete the contract. No damages can be collected for such refusal. So, also, if the contract has been partly performed, and the unperformed part is separable from the rest, either party may refuse to complete. But where one party has completely performed and carried out this part of the contract the other party cannot refuse to perform, while at

the same time retaining the benefits of performance by the first named party."

The Clause, "It Is Agreed That Should the Aforesaid Union Withdraw, or Be Dissolved, ^{rescinded} Sustained, or Forfeit Its Charter, Then All Property, Moneys, Books and Papers Shall Become the Property of The Western Federation of Miners," in the Charter of May, 1893.

Noticing that the Court below after concluding that such a contract as the one herein in controversy was ultra vires and non-enforceable further proceeded to deliver its opinion as to the weight of the testimony with regard to whether or not the clause above set forth existed in the charter of May, 1893, to The Butte Miners' Union from the Western Federation of Miners, ~~We~~ ^{and} have closely examined this testimony and are not of the same opinion ^{as} ~~of~~ the Court below and do not believe that this Court, upon an examination of this testimony, will reach the same conclusion as the Court below. It is very easy for us to see how the Court below fell into this error; for taking the Court's own opinion (Trans. p. 296) (pp. 301-302), the Court stated that it is supported by the testimony of both parties that the charter of 1893 was not a duplicate of other charters then issued, but contained an honor roll of certain of defendant's members, which differentiates it from the other charters, and of which the Aspen Charter, issued amongst the first, is in evidence.

William W. Walsh, one of the former members of the Federation and one of its early officers, testified as to how the names of T. J. McLennan, Stephen Nicholas, Wm. Cunningham, Bart Maloy, J. T. Poynton, came to be printed on the bottom of the first charter, for he states, after having stated that he knew all of these men, that they were the committee of officers of the first officers of the Western Federation of Miners and that is how their names come to be on the bottom of the charter (Trans. p. 335). And this is corroborated by other evidence—the minutes, (Trans. p. 496).

And the witness James J. Maher, on cross-examination, being examined as to whether or not he, as an officer of the Western Federation of Miners, had issued a charter with the names above mentioned thereon, states that he had not for the reason that before the 1894 convention these names were taken off, and at the 1896 convention the word "America" was taken off, but in all other respects the charter was never changed (Trans. p. 341). This testimony was given with relation to plaintiffs' Exhibit "D," which is the charter from the Western Federation of Miners to Aspen Miners' Union No. 6 (Trans. pp. 334-335). This same witness, James J. Maher, further testified under cross-examination that the original charter issued to The Butte Miners' Union No. 1 by the Western Federation of Miners was identical with the Aspen charter (Trans. p. 341).

The witness Patrick Meaney, who was a resident of Butte for thirty-seven years and who became an active member of Butte Miners' Union in April, 1895, and contributed to the first money that was raised to build the present Miners' Union Hall in 1881, stated: "I was acquainted with the original charter that was issued to The Butte Miners' Union by the Western Federation of Miners in 1893, and saw it there hanging up on the wall all the time after and numerous times after that. I read it. There was a clause in the original charter as originally issued to The Butte Miners' Union providing that in the event of withdrawal, or suspension, or for other causes named therein, there was to be a change of the ownership of property or that the property was to become the property of the Western Federation of Miners. In the old charter of The Butte Miners' Union there was such a provision that if the charter should be revoked or if the union should withdraw or be suspended from the Western Federation of Miners, and that was the general understanding when the Western Federation of Miners was formed. That provision was in the original charter that I saw in The Butte Miners' Union Hall—the one that was issued in 1893 (Trans. pp. 475-476). I went to The Butte Miners' Union Hall and saw the charter the day it was hung up or the day after, I don't recall the date; it was after it was hung up. I was President of the Workingmen's Union and I was Secretary of the Labor Temple and that occupied three nights out

of each week during several years, and I had access to all of the charters, and I read all of them, and made it my business to read them. When this charter was hung up it was framed and had a glass front. I don't recall any drapery being on it. This charter which was hanging up contained five names: Joe Boynton, Bill Cunningham, but the others I cannot recall. There was John Gilligan, President, and W. J. Weeks, Secretary; Poynton's name was afterward stricken from the charter. I do not recall John Eddie's name being on the charter; neither do I recall Pat Colm nor Frank Shovlin. I read the charter after it was hung on the wall. My business took me in there most every day. It is not a fact that I am appearing as a witness in this case because of my feeling against Mr. Breen. (Trans. p. 478)."

These three men had no connection at the time of the trial and apparently for a long time prior to that time with either party to the controversy, but, as it appears, had previous to that time been connected with both parties.

In conflict with this, relating to the names on the bottom of the original charter, the witness Pat Leahy, testifying for the defendant, stated, in distinguishing the charters that upon the charter issued as a re-issuance of the old charter there were but two names, that of Mr. Mills and Mr. Moyer, while on the old charter he believed there were the names of about twenty of the charter members of Butte Miners' Union

No. 1 (Trans. p. 442). But this same witness on cross-examination (Trans. pp. 444-445) on being asked to distinguish as between the provisions of Exhibit "D," the Aspen charter, and the provisions of the charter of October, 1914, stated that, "There is a good deal of difference there that I would have to go through. It differs in this respect: 'It is hereby agreed in acceptance of this charter that the aforesaid union shall conform to the rules and regulations and in default thereof this charter may be revoked.' That was not in the old one. With the exception of that it is the same as the old one in the body of the charter, but in the old one names of the members, the charter members; in our old charter, the names of the charter members were in it right underneath the charter members. I could not say that the names underneath were the same as the names underneath on this one; I couldn't give you the names that were there. That charter was signed by John Gilligan and W. J. Weeks as President and Secretary, but that is the Aspen charter of Colorado and our charter belonged to Butte, Montana."

This same witness later on, on re-direct examination, tried to explain this portion of his testimony (Trans. p. 448); and this is the same witness that on page 441 of the transcript, when being asked what became of the charter of 1893, stated, "I guess that charter that was received in 1893 was blown to hell, or some other foreign country, wherever it went, I don't know, but

the hall was blown up.”

The witness Frank O'Connor stated, referring to the old charter of 1893, it did not contain a forfeiture clause of the property of The Butte Miners' Union (Trans. p. 434), but afterwards on cross-examination this same witness (Trans. p. 437-438), testifying with relation to the similarity and differences between the old charter and the charter of 1914, would not state that the names of Maloy, Cunningham, Poynton, Nicholas and McLennan were not on the old charter, he stating as follows: “I know of them, but I could not say whether their names were on the original charter or not.....I know Cunningham and Maloy, and they were members of the union.

The witness Wm. E. Deeney, testifying for the defense, stated, referring to the old charter of 1893, “There were a number of old names on that charter, I don't know how many, the majority or nearly all of them are dead. The charter in size was about fourteen inches by twenty-one inches or twenty-four inches, while I am not swearing to that that is my recollection (Trans. p. 424).”

This witness of course further testified that the so-called forfeiture clause was not in the original charter, but this witness afterward refused to testify as to the names on the original charter, stating: “Well, I forget the names of those who were on it. I would not attempt to testify to the names.”

The witness Jacob Oliver, testifying for the defendant, when being asked what the original charter contained, stated: "I could not say exactly what it contained. I saw it hanging on the wall (Trans. p. 415)." And in reply to the question as to whether or not it contained the so-called forfeiture clause he stated, "Not to my knowledge (Trans. p. 415)." And referring to the list of names on the charter he stated that, "On the charter there were a list of I think ten names taken from the old charter or the original charter members of The Butte Miners' Union; I think it was ten of the original names. (Trans. p. 415)."

And these are the witnesses testifying in contradiction of plaintiffs' witnesses as to the contents of the original charter and distinguishing the original charter from the re-issuance of the original charter, as claimed by the complainants, as the same is alleged in the Bill of Complaint, all but Wm. E. Deeney members of the defendant; so it is easy to see how the Court fell into the error of distinction in the charters by relying on the testimony relating to the names of members of the Federation or union at the bottom of the old charter. We believe it is plain to the Court here that the list of names at the bottom of the original charter were the same as those that appear on the bottom of the Aspen Charter, plaintiffs' Exhibit "D" (Trans. pp. 334-335).

And that portion of the Court's opinion relating to the stipulation having been contained in the original

draft of the charter and having been stricken out later, we are unable to find any foundation for in the testimony. Furthermore, in this connection we take an exactly opposite view to the Court below^{and} expressed in its opinion where it stated: "Further support is found in the likelihood that the defendant, the inspiration of the Federation, the only owner of property, of consequence, probably of ability to stand alone, and always the mainstay of the corporation, would not hazard its property upon an expeditmental Federation wherein it might be outnumbered and that the other union, desirous of its alliance, would yield a point (Trans. p. 302)."

The principal reason for differing with this conclusion is the fact that the Federation was brought into existence apparently to relieve The Butte Miners' Union of the single-handed fight for the rights of its own members and those engaged in a like occupation in a neighboring state and to relieve itself of burdens; as is shown by the testimony of the old-time residents and members of the old organization, that was its purpose.

The testimony of the witness Wm. E. Deeney states as follows: "I know the purpose of organizing the Federation, the reason of organizing it. I know from prior discussions that the intention was that there should be one general organization of miners in the State of Montana in the West, and that there should be one constitution and one initiation, and that on the

payment of one dollar they could be transferred from one local to another. I have many times read the first constitution issued by the Federation of Miners (Trans. pp. 425-426)."

And the witness Patrick Meaney testified on cross-examination, in reply to questions by Mr. Breen, as follows: "I know that you made the motion appointing the committee because we had the Peoples Headquarters, and it was your object to become the first President of the Western Federation of Miners, but we saw to it, as members of the Peoples Party that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention and that you were not even elected as a delegate. You tried to be president of everything that came up from a labor standpoint in the state at that time. At that time there was a state association but it was not an active association or organization. No organization of that kind had any definite purpose. The formation of the Western Federation of Miners was for the purpose of relieving the expenses of The Butte Miners' Union. At that time The Butte Miners' Union had property, as also did the Granite Mountain (Trans. p. 477)."

And we can find no place in the minutes of the original meeting at which the Western Federation of Miners was formed that refers to any distinction being made in charters for or to the different unions. (Trans. pp. 480 to 515).

It is very easy to see how the Court could fall into

the error as to the contents of the charter from relying upon testimony as to the form of the charter, especially when the Court did not have a transcript of the testimony before it; and it is very easy to see how the witnesses for the defendant, in testifying with regard to the form of the charter and the names at the bottom of it, could be testifying with regard to a charter received from the State of Montana at the time of the original incorporation of the defendant, for it can be seen from Exhibit "C" (Trans. p. 315), a letter written by Pat Lee, Secretary-Treasurer of the defendant to Ernest Mills, Secretary-Treasurer of the Federation, on the 24th of November, 1914, that there was evidently some old charter issued by the State of Montana which was lost or destroyed. This, undoubtedly, would be the charter that would have the names of the original charter members of the defendant upon it, for the corporation was formed before the Federation. So, we take it, that the evidence conclusively shows that as to the substance of the charter, the one issued and accepted in 1893 and the one issued as a re-issuance thereof in 1914 were identical.

The Acceptance of the Charter in 1914.

The application of the defendant for a re-issuance of the charter of 1893, made on the 22nd of September, 1914, was addressed and sent to the Western Federation of Miners and was done by authority of the corporation (Trans. pp. 6 and 7). The Western Federation of Miners, receiving that application, acted

upon the same and sent to The Butte Miners' Union the charter of date October 3, 1914 (Trans. pp. 8 and 9). Now, if this charter of October 3d, 1914, is a re-issuance of the charter of 1893, the contract as between the parties thereto became binding at the date of the receipt of the charter of October 3, 1893, which was previous to the 24th day of November, 1914. The letter of the Secretary-Treasurer of The Butte Miners' Union, the defendant plaintiffs' Exhibit "C" (Trans. p. 315), acknowledges the fact that the charter was received before that date. This charter was kept and retained by the defendant until the day of trial and until it was brought into Court (Trans. p. 469). There was no action taken by the defendant subsequent to the receipt of this charter in 1914 with regard to it until the 15th day of June, 1915, and it was never returned to the Federation (Trans. p. 469). After the receipt of this charter of October, 1914, the defendant continued to do business with and correspond with the Federation as shown by the testimony of the Secretary-Treasurer of the defendant (Trans. pp. 465-466-468-469).

"A contract becomes complete when there is an offer made and that is accepted by the party to whom the offer is made. In other words, the contract is complete when both parties have agreed to one and the same set of propositions. This is accomplished when, without duress or mistake on the part of either party one submits a proposition to which the other accedes,

provided such acceptance neither takes from nor adds to the offer, but accepts it in every respect just as it stands. When the offer is accepted on the terms in which it is made, before a valid revocation, the contract becomes instantly binding on the parties and neither party can subsequently recede from the contract without the consent of the other.”

Elliott on Contracts, Vol. 1, Sec. 36, p. 44.

The defendant contends that it continued to work, under the old charter of 1893 up to June 15, 1915, the time of its withdrawal; and even under this contention, if the same is true and the charter of 1893 contained the clause providing for the forfeiture of the property owned by the defendant at the time of its withdrawal, then under the theory that the case was tried on, the defendant is bound to perform the conditions of the charter of 1893, for the Secretary-Treasurer of the defendant testified that after receiving the charter of October, 1914, “We were working under the old charter.” (Trans. p. 465); and it further shows by the testimony of this same witness that the defendant even took legal counsel after the receipt of the charter of October, 1914, early in January, 1915, as to whether or not they should withdraw from the Federation, and they were advised not to until the suit was determined. (Trans. p. 471). The reference to the suit here is the suit by the President of the Western Federation of Miners and others against the officers of The Butte Miners’ Union, filed in December,

1914, a copy of amended complaint, in which, is plead by the defendant ⁱⁿ its answer herein as Exhibit "E" (Trans. p. 95 to p. 110).

If the charter of May, 1893, from the Western Federation of Miners to The Butte Miners' Union, a corporation, contained the clause, "It is hereby agreed in acceptance of this charter that the aforesaid union shall conform to the constitution, rules and regulations, and in default thereof, this charter may be revoked and the union suspended from all rights, and benefits, according to the laws of the Western Federation of Miners, and further, it is agreed that should the aforesaid union withdraw or be dissolved, suspended or forfeit this charter, then all property, moneys, books and papers, shall become the property of the Western Federation of Miners," the defendant is bound by the charter contract of both 1893 and 1914, since there is nothing illegal in said contract and since the event providing for the change of ownership in the property has come to pass. And the Court erred in not granting the relief prayed for in the bill of complaint.

If the corporation were a voluntary association, such as the complainant Western Federation of Miners, there could be no question as to the right of the Federation to take the property in accordance with the charter agreement, for such a proposition has been before the different Courts of the land time and time again, and the courts have taken cognizance of such

condition where there was no question of discipline or internal government and there is none in the case at Bar. In connection with this proposition the Supreme Court of the State of Washington in the case of Forrester's of America et al., vs. Hodel, reported in the 133 Pac. p. 438, upon a contention by the defendants that they could leave the lodge and take with them the property of the subordinate lodge, said "that such is not the rule" and held against the defendants. And to the same effect are all of the following cases:

Lone Star Lodge vs. Cole, 131 S. W. p. 1180.
Minor vs. St. Johns Grand Lodge, 130 S. W.,
893.

Supreme Lodge K. of P. v. Knight, 3 L. R. A.,
409 (See pp. 412 and 413).

Tompson vs. Grand International B. etc., 191
S. W., 834.

Wellenvoss vs. Grand Lodge, 45 S. W., 360
40 L. R. A., 488.

Grand Lodge I. O. O. F. vs. Barker, 103 N.
W., 193.

Grand Lodge K. of P. vs. Germania Lodge No.
50—38 Atlantic, 341.

The same principle of law has been further elaborated on in the case of Hochreiter's appeal, 93 Penn. 479 at p. 484, which case has been followed and affirmed in Pennsylvania in the case of Polich Asso-

ciation et al., vs. Kubiak, 238 Penn., p. 464, the last case being decided in 1913; and also in Freundschaft Lodge vs. Alchenburger, 235 Ill., p. 438. The Supreme Court of Kentucky, in speaking of such a situation as the one before us, except that, that was a schism in a religious organization stated:

“When a schism has occurred in a religious or benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, by the investment of dues collected from its members while harmony prevailed, the title to the property remains in the name of the association and that faction which has remained loyal and adhered to the laws, usages and customs of the general organization constitutes the true association, and is alone entitled to the use and enjoyment of the association’s property.

“This rule applies whether the subordinate association be a corporation or simply a voluntary association and regardless whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages and customs of the general organization, provided the minority includes the minimum number necessary to support the local organization.

“Union Benevolent Society etc. v. Martin etc., 133 Ky. 25 (29).”

If the corporation defendant here had the power to contract, as these appellants claim it had and did contract as evidenced by the charter plead in the bill of complaint, it is immaterial whether the corporation or the Federation was the first in existence, for it must be borne in mind that there is no attempt and that there has been no attempt in this action, to dissolve the corporation or to interfere with its further business or any of its property subsequent to the 15th day of June, 1915, the date of its withdrawal.

And it might be well to state here also, that while a constitution and by-laws of an organization relate to its internal government and not to its general contractual powers and relations as to its conditions of becoming members, and as to conditions arising subsequent to membership, such as acts of severance of membership, we find, the constitution of the Western Federation of Miners before the Court providing in Sec. 4, Art. XV, as follows:

“The property of defunct unions shall be held in trust by the Federation, and where local unions are reorganized within a period of one year, comprising of twenty or more members of the former local the property so held in trust shall be returned to the organized local, but when the locals are reorganized with less than twenty members of the former local, they shall have no claim on the property of the defunct union. At the expiration of one year from the local going de-

funct the property shall cease to be held in trust and become the property of the Federation.”

Such a provision showing that the members among themselves regarded as a wise provision the ability to take and hold the property of unions that become defunct so as to secure something, in the matter of recompense to those who remain faithful, for services performed in the past to those who had passed away or who had severed their connection.

And in this same connection it may be well to remember that the rights of the parties in such controversies should depend upon their own intentions and agreements made at a time when all were in harmony and there were no schisms. Such has been held to be the rule in other jurisdictions as in Illinois and Pennsylvania.

Alcherburger vs. Freundschaft Lodge, 138 Ill. Appeal, 204.

Polish Association etc., v. Kubiak, 238 Penn., 464.

In conclusion we wish to state that we recognize, of course, the general rule that forfeitures are not enforced in Equity as in Law, but we believe it to be as well stated by the Illinois Court, in the last case above cited from that Court, that the rule is and should be:

“The constitution of the State Grand Lodge

as we read it expressly recognizes the supremacy of the United States Grand Lodge and that the State Grand Lodge is subordinate in authority to the United States Grand Lodge. It provides for the payment of the State Lodge of a per capita tax for the maintenance of the United States Grand Lodge, and for sending representatives to its meeting. If ever the withdrawing members of the organization have forfeited rights and property they did it by their own voluntary act, and in such case the rule against the enforcement of forfeitures in a Court of Equity, cannot be invoked.

So we respectfully submit that the decree of the Court below should be reversed and set aside and that an order should be made ordering and directing the Court below to enter a decree in conformity with the prayer of the bill of complaint herein or in such other manner and form as to this Honorable Court may seem just and meet in the premises.

Respectfully submitted,

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*Service of the foregoing brief of Appellants
acknowledged and copies thereof received
this 1st day of February, 1917*

Peter Breen

